The Cochin Kuries Act Amendment Bill (section 50.)

*Mr. M. Sivarama Menon (*Ernakulam*): Mr. President, Sir, I beg to move that the Cochin Kuries Act Amendment Bill (section 50) be read in Council. The purpose of the amendment has been explained clearly in the Objects and Reasons attached to the Amendment Bill itself. I wish to bring to the notice of this Hon'ble House that the present Kuries Act contains provisions by which parties who have joined a kuri have been amply protected in all possible ways especially in the case of those to whom moneys are due if such kuries are run for the benefit of a society or an association. Section 50 of the Kuries Act says that if a subscriber has paid any money as subscription to the kuries which partake of the nature of a lottery, then he is entitled to recover that with 6 per cent interest by the institution of a suit. That section removes the taint attached to the kuries in the nature of lotteries. Then sub-section (2) of section 50 validates certain kuries and decrees. It runs as follows.—

"Notwithstanding anything contained in this Act or in the Cochin Limitation Act or in the decisions of courts in Cochin, a suit by a subscriber on account of any transaction partaking in the nature of kuries which has terminated before the coming into force of this Act and has been or may be declared illegal as amounting to lotteries by courts may be instituted within one year from the date of passing of this Act or within the period of limitation applicable to such suits, whichever period expires last and no such suit so filed or pending at the date of passing of this Act shall be dismissed on the ground that the period of limitation applicable has expired or that the claim is illegal as amounting to a lottery within the meaning of section 30 of the Indian Contract Act as made applicable to Cochin by His Highness the Raja's Proclamation dated 14th August 1908."

So that it may be clear from this section that another class of suits has been saved. Sub-section (3) applies to suits which have already been dismissed as well as the re-opening of such decrees. It reads "Where a suit by a subscriber in any transaction partaking of the nature of kuries has been wholly or in part dismissed or withdrawn after the 24th Karkadagam 1097 and before the passing of this Act either in a court of first instance or of appeal on the ground that the claim is illegal as amounting to a lottery, the case may be restored on an application in writing to the Court by which the claim was dismissed or in which it was withdrawn....." Sub-clause (4) reads "No suit instituted by a foreman of a kuri to recover money lent or invested by him out of kuri amounts of any kuri which has been started before the coming into force of this Act shall be liable to be dismissed on the sole ground that the kuri is illegal as amounting

*Speech not corrected by the hon'ble member.

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to a lottery." So that it will be clear that the object of section 50 was to prevent other persons taking undue advantage of the fact that those funds happened to be subscribed or advanced from a fund which partakes of the nature of a lottery. But nowhere do we find in this Act a provision by which persons for whose benefit such kuri was run being empowered to recover that money in case they are misappropriated. Suppose there is an institution for the running of which they wanted funds. The best idea was to run a kuri of the nature of a lottery without creating any responsibility for the members joining such kuries. Now after some time when suits began to be instituted the courts held that such kuries partook of the nature of lotteries and therefore the suit was not maintainable. The result was that several persons who had subscribed were unable to get their money because the foreman had invested the money on mortgage and the subscribers were not able to recover that and all sorts of complications arose. People had started such kuries in almost all parts of the State. The legislature stepped in and wanted to protect such cases from the operation of illegality and enacted this provision contained in section 50.

My amendment to the Act is only for the purpose of including one more class of suits to the exceptions already provided for by section 50. If any kuri has been started on behalf of an institution or association for its own benefit and managers have been appointed to carry out the routine matters relating to that kuri and if such persons now refuse to account for the amount on the ground that the kuri is tainted, being an illegal transaction, and therefore no court of law can pass a decree against them, such people cannot be allowed to profit by this in the face of the exceptions already granted in the case of other persons who have started kuries partaking of the nature of lotteries. In suits for rendition of accounts instituted against the managers by the association who are in the position of trustees appointed by the Yogam, such persons now contend that they are not liable to render any account because it is a kuri which is illegal. I am reliably informed by a respectable gentleman who is conducting a case that the amount involved in the suit is 20 to 30,000 rupees. I myself had the occasion to institute a suit where the nature of the amounts involved came to the tune of half a lakh of rupees. On account of this difficulty the parties have arranged for a settlement of the dispute on a paltry sum and the matter has been settled on account of this lacuna in the law. There may be several other cases.

When I sent up this Bill, a questionnaire was sent to me asking me to give certain statistics. Of course I was trying

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with the machinery at my command to furnish the information. Mr. P. Govinda Menon and Mr. Viswambharan gave the information which have come to their knowledge. There are cases where such foreman and the managers have refused to render accounts to the Yogams when demands are made of them to do so. It is not possible for me to arrive at the probable amount that may be involved if this legislation is passed and the extent of the amount that may be saved for the benefit of the Yogams. The question is only whether there is any difficulty. The necessity for this does not depend upon the largeness or the smallness of the amount involved. There is an inequity attached to it. It is inequitable to suppose for a moment that even where all the other classes of persons have been saved, those persons who have really violated the provisions of the Penal Code in that they have misappropriated the funds, should not be protected. I think that the time limit as contemplated by section 50 may also be brought about. Those who are vigilent to recover that money or hoping to institute suits on the apprehension that this plea will be raised, may be given one year's time so that equal justice may be meted out to all persons who had anything to do with the kuries. To add to this, in the Bill that has been introduced by Government the principle embodied in the decision referred to in 24 Cochin is practically embodied. (24 Cochin 602). There three persons started a kuri of this nature which is a lottery and out of these three one manager misappropriated certain funds and he executed a mortgage for his liability for the amount so misappropriated in the name of the others and an assignment was taken of that mortgage right and he instituted a suit. It was held that the suit was inconsistent. This transaction arose in a kuri partaking of the nature of a lottery and hence out of an illegal transaction. The learned Judges of the High Court held that " The characteristic feature of illegal or unlawful contracts, that is to say, of those which are prohibited by law, is that not only are those contracts themselves unenforceable but they possess the additional quality of rendering transactions and contracts void, if closely connected with the illegal contract. The general principles indicating the degree of connection required are not by the very nature susceptible of being reduced to an all comprehensive formula of universal application and are not free from difficulty in their application to particular facts. If the concern which the question of illegality is raised is so connected with the illegal transaction that the party suing thereon cannot make out a *prima facie* case without disclosing the illegality, the contract is itself unenforceable. Otherwise it is not invalid on account of such connection. If the illegal transaction

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is in no way necessary to establish the plaintiff's right to recover, it cannot be invoked to defeat such recovery. The test of violation of rules of public policy is whether the plaintiff requires the aid of the illegal transaction to establish his right."

On this ground no decree upon that mortgage deed was passed. This decision and the several observations contained therein also may lead to some confusion in the law as it prevails now, because in the case of Yogams or institutions if persons are appointed as trustees for the purpose of conducting kuries, they cannot be deemed to be the agents of the institution or the association. The relationship between the principal and the agent has been laid down in the Contract Act; "If an agent receive money on his principal's behalf under an illegal or void contract, the agent must account to the principal for the money so recieved, and cannot set up the illegality of the contract as a justification for withholding payment, which illegality the other contracting party had waived by paying the money. Upon this principle it has been held that an agent receiving cesses from tenants which are illegal under the Bengal Tenancy Act, or moneys due to the principal under a wagering contract is bound under the provisions of this section to pay the same to the principal." Now the question of agency never arises in 24 Cochin, the case which I read.

Mr. C. A. Kunjunni Raja (*Advocate-General*): If that is the law there is no necessity for the amendments.

Mr. M. Sivarama Menon (*Ernakulam*): In the case referred to, the partnership between the three individuals was considered to be illegal and the general observation was that if a party wants to get relief he has to undertake to declare that the transaction was illegal, and then such a claim will not be enforceable. The Government Bill seems to incorporate the same thing in the decision of the Chief Court. This is only an amendment of the Bill which has already been introduced. Regard being had to all these facts, I think it is necessary that if there is justice in the case of persons or associations to whom monies are due from the managers they should have a clean ground. With regard to the question as to whether they will be entitled to recover the money, it is not a claim on the transactions which arose out of a kuri partaking of the nature of a lottery. The question as to whether the persons selected by the associations can be deemed to be agents in law is a very thorny question. This House cannot assume that on the basis of the operation of the Contract Act this may be the ultimate finding because there are difficulties. When once the legislature has shown its condescension by enacting this Kuries Act by

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which innocent parties were protected, by this amendment, my submission is, that the class of suits relating to persons to whom or the associations to whom monies are due from managers should have been protected. It might have been an omission. There might not have been any necessity for want of any case. But the time has now arisen when the legislature has to step in and make a provision for a limited time only during which all these persons must come to court and try to realise the monies. Even when suits dismissed were allowed to be opened by a mere application of section 50, I do not for a moment think that this Bill which seeks to give only a time limit for the parties to institute such suits will be considered out of place. The amending Bill runs thus:— "Clauses (1), (2) and (3) above, of this section are also applicable to suits by beneficiaries against foremen for monies due or for rendition of accounts on account of kuries partaking of the nature of lotteries, with the modification that such suits under clause (2) shall be instituted or application under clause (3) shall be made within one year from the date of the passing of this Act instead of the date of passing of the Cochin Kuries Act, VII of 1107."

The only object therefore is to allow one year's time from the date of the passing of this Act by which an opportunity will be given to such persons to realise their monies by instituting suits in a Court of law. It is not perpetually to be kept in the Statute Book. The legislature has gone to that extent even before. My submission is that there is great necessity for the legislature to interfere and give such a time limit of one year in order that there may not be difficulties for them in the nature of these decisions. For these reasons I beg to move that this Bill be read in Council.

Mr. V. J. Mathai (*Planters*): Sir, I rise to second this motion. As I understand it the principle is very simple and wholesome. If I may state it in my own way it will amount to this. If associations or Yogams have started illegal transactions whereby monies have been collected illegally by means of such illegal transactions from gullible persons the question that arise is whether those persons who have made those illegal gains by the said illegal transactions ought to be asked to disgorge what they have collected. The case, so far as I have understoods, is this. Certain kuries are started under the provisions of which a large number of persons, say 1000, are to pay one rupee each per month. The lucky one who gets the kuri by one payment of Re. 1 will get 100 rupees and he can walk out. So he makes a gain of Rs. 99. But the starters of these kuries do really get a huge profit namely the interest on Rs. 900 for 100 months. From the second month they get the interest on 1,800 rupees.

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When it comes up to the 50th month they are in possession of Rs. 45,000. They have to pay only Rs. 5,000 and the balance is therefore 45,000 rupees. These go into their hands. Our courts held rightly on the construction of the principles of the Contract Act that such a transaction is illegal coming under the term 'wagering contract' or 'lottery'. Now the position is this. All those who have collected money by these illegal transactions keep these monies because those who can ask for this money are only the beneficiaries of those Yogams. There are a number of Yogams of that sort. Personally I know of one or two Yogams at Palluruthy and some others at Eroor, Vyttila and other places. Most of the kuries which were started were for 1,000 rupees. Therefore one can easily understand that tremendous amounts have been collected by such Yogams which are mostly unregistered Yogams, the result being that the managers of these Yogams get possession of those funds which they have been generally swallowing for their own purposes. The question is, as to whether the supposed beneficiaries, whether they be the members of the Yogam or in cases where schools or temples are sought to be started, such schools and temples, can collect these amounts. On account of judicial decisions and on account of the existing law which pronounced these kuries as illegal our legislature stepped in and then enacted the Cochin Kuries Act, section 50 of which enabled people to get the money paid by subscribers. Now the question is, whether if the subscribers have been enabled to collect the money, then why should not the balance be distributed among the beneficiaries. Already there is a committee considering the Kuries Amendment Act sponsered by the Government. I think there will be no objection to send this to that committee especially in view of the enabling provision having been limited to one year. Such an enabling provision is necessary. One year may be given as the period during which they can collect the money. No fear need be entertained that such a state of affairs will continue for a long time. This amendment gives only a period of one year. It is an inoffensive piece of legislation and I commend it for the acceptance of this House.

Mr. A. V. Moothedan (*Chalakkudi*): Sir, I beg to oppose this motion. The Kuries Act was passed in 1107 and now seven years have passed. Under the provisions of the Act, all lotteries are illegal. There are special provisions as well as civil disabilites attached to lotteries. Section 4 of the Act provides the penalties for starting lotteries without the sanction of the Government. The honourable mover has given notice of moving an amendment to this section; but he has tactfully avoided it today. Section 4 reads as follows:— Transactions

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partaking of the nature of a kuri but not falling within the definition of sub-section (1) of section 3 are void and any person who starts such a transaction or conducts such a transaction started after the coming into force of this Act without the previous sanction of the Government shall be liable to a fine not exceeding 500 rupees: Provided, however, such transactions which have been started but not terminated before the coming into force of this Act shall be deemed to be legal." Therefore to avoid the penal provision, two conditions have to be satisfied. The lottery must have been started before the Act and it must be running at the time the Kuries Act was passed. If these two conditions are satisfied, the starter of such a lottery will not be prosecuted.

Now coming to the civil disabilities attached to lotteries, section 50 deals with them. Under sub-section (2) of section 50, the right to recover by civil action, money subscribed to lotteries, has been given only in the case of lotteries which have terminated before the Kuries Act was pased. Therefore only in the case of kuries which have been started and terminated before the Act came into force, only in such cases, a person can recover the amounts he has subscribed by civil action. In all other cases no action lies. That is the position. The intention of the legislature is very clear.

Seven years have passed after the Act came into force and there have been so many transactions honestly entered into between the starters and others on the basis of this law. Now to reopen all these transasctions and to say that the intention of the Legislature is different is very hard and it is against all cannons of jurisprudence. Of course the legislature has power to do that but there should be extraordinary circumstances. The hon'ble mover has mentioned no such circumstances. Therefore I submit that this Bill is unnecessary and I oppose this measure.

Mr. K. Kochukunhan Kaimal (*Vadakkancheri*): Sir, I beg to oppose this measure on the following grounds. Mr. Sivarama Menon said that there is a necessity to give protection for the beneficiaries who are responsible for starting kuries and that actions brought by the beneficiaries against the managers are likely to be met by the plea that the monies realised by them are kuri money which are taken by an illegal act and that they are not accountable. It is this fear that has prompted Mr. Sivarama Menon to bring in this measure. I am sure that such an action does not come under the Kuri Act. The Kuri Act has been passed among other things to give protection to certain classes of kuries which have been declared till then illegal and these kuries were now declared legal at least to save

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the rights of subscribers. They were legalised for certain purposes. The actions by the subscribers were legalised and remedies were given. The only parties to the contract are the subscribers and the starters. Where kuries are started as contemplated by the mover on behalf of Yogams or associations on whose behalf certain managers have started kuries there are only two parties. The question whether the starters are also liable to account to the beneficiaries is not one really coming under the Kuri Act. So far as the parties to the kuries are concerned even for those kuries which have been illegal protection has been given by the Act. The claims that arise between the starters and the beneficiaries are more or less in the nature of claims by the principals against the agents or by the beneficiaries against the trustees, so that those claims do not really come under the claims arising out of a contract of kuri. Those claims have to be controlled and decided by the law that governs the relationship between those two parties either as managers or trustees; the mover has not been able to cite any instance where this plea of illegality has been accepted by any of the Courts. He relies upon the decision in 24, Cochin, saying that the illegality was on account of the illegality of the kuri. The question whether the claims by the beneficiary as against the starters of kuries were not decided there, and because the conduct of the kuri was declared to be illegal whether that illegality will also apply to the claims arising between the trustees or managers and the beneficiaries has not been decided I do not think there is any necessity to amend the Act in order to bring those classes of people under this. In fact those people do not come under the parties governed by the Kuri Act. What I submit is, unless and until the court declares that claims by such beneficiaries as against the managers would also be tainted by such illegality, I think it is rather unwise to anticipate such decisions of our High Court, there will be no remedy Further the amounts realised or received by the managers or trustees are to be accounted for by them to the beneficiary, especially those amounts which have not been properly accounted for by the then managers or trustees. Though they have received the money by kuries which are illegal, they will have to be accounted for to the beneficiaries in case they are not properly spent for the institutions. The relationship between the parties to a kuri does not extend to the relationship between the starters of a kuri on behalf of Yogam. They perfectly come under a different class and such classes are governed by some other branch of law. There is no necessity to bring this amendment and to extend the law to the beneficiaries.

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The House rose for lunch at 1-15 and re-assembled at 2-30 with the Deputy President in the Chair.

Mr. C. A. Kunjunni Raja (*Advocate-General*): So far as kuries which amount to lotteries are concerned the Kuri Act deals with the rights of foremen and subscribers. The Kuri Act does not deal with the rights of beneficiaries. With regard to these rights of foremen and subscribers there is provision made under section 50 of the Act. The rights of subscribers with regard to kuries which are started after the coming into force of the Act have been provided for in section 50 (1). With regard to kuries which have already terminated provision is made in section 50 (2) and with regard to decrees provision is made in section 50 (3) and the rights of the foreman to recover the amount have been provided in section 50 (4). We are dealing with subscribers' money and provision was, therefore, made for recovery of the same under these sections. The intention of the Kuri Act was that in future kuries partaking of the nature of lotteries should not be started and under section 4 to start lotteries has been made a penal offence. The present Bill does not attempt to define the rights of the foremen, or the subscribers; but it is proposed to regulate the rights of third parties who are said to be the beneficiaries or persons on whose behalf the kuri is said to have been started. It is not clear as to whom it is intended to benefit by this Bill. In the case of Yogams, there will be cases where the persons who actually conduct kuries may be different from the persons on whose behalf and for whose benefit these were started. In some cases the representatives who conduct the kuri and the trustees will be the same. For instance in the case of a temple, it is only the trustees who can act on behalf of the temple and conduct kuries on behalf of the temple. In such cases only if the managers who have started the kuri are different from the persons who represent the deity, suits can be filed; otherwise both parties will be the same and no action will lie. In cases where the individuals are different the question will be whether these persons who conduct kuries are the agents of persons on whose behalf the kuri is started and if so they are liable to refund. There is a case in 44, Madras 334 to the effect that the agent is liable to refund even though the contract of agency is illegal under the Contract Act. On account of that decision, there is absolutely no necessity in the case of agency for this law at all. In other cases, if these are not agents the question is who should share the spoils and why should the one be preferred to the other. Further Government wanted to ascertain from the mover of this Bill whether there were many cases of this type. We cannot undertake

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legislation for one instance. There must be several instances and large amounts should also be involved. The hon'ble member was requested to supply this information and absolutely no information has been supplied and Government are not in a position to say whether there are any instances of this type at all. Now to-day in this House a passage from a written statement has been relied upon. I do not know whether this suit has been finally decided at all. This Kuri Act came into force by the end of Karkadagam 1107 and since then very nearly 7 years have elapsed. If there were any such difficulties, why did the people wait for such a long time to bring in a measure like this. It is proof there are only few instances if any. Government cannot accept the measure for all these reasons.

*മിസ്റ്റർ കെ. അയ്യപ്പൻ: സർ, ഇപ്പോൾ ഈ ബില്ലിന്റെ ഉദ്ദേശം ഞാൻ മനസ്സിലാക്കിയിട്ടുള്ളതുപോലെ ആണെങ്കിൽ ഈ ബിൽ ആവശ്യമാണെന്നാണ് എനിക്കു തോന്നുന്നതു്. ശവമ്മൻറമോത്തുനിന്നു പറഞ്ഞ സമാധാനം ശരിയാണെന്നു് എനിക്കു തോന്നുന്നില്ല. ഒരു യോഗം ഇതുപോലെയുള്ള ഇല്ലിശലായിട്ട ഒരു കുറി തുടങ്ങി. ആ കുറിയോഗത്തിന്റെ പേരിൽ നടത്തി വന്നവർക്കു പണം മുടവാഹികം കൊടുത്തു. പിന്നീടു കുറിറജിസ്ട്രേഷൻ വന്നപ്പോൾ കുറിയിൽ ചേർന്നിട്ടുള്ള ആളുകൾക്കെല്ലാം യോഗത്തിൽ നിന്നു പണം ഈടാക്കുവാൻ സെക്യൂരിറ്റി കിട്ടി. യോഗം മുടവാഹികം യോഗത്തിന്റെ പണം എടുത്തു അതിനു കൊടുക്കണം. എന്നാൽ യോഗത്തിനു ഈ പണം കിട്ടുവാൻ തരമുണ്ടെങ്കിൽ ആക്ഷേപമില്ല.

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: ആതിനു കുറിറജിസ്ട്രേഷനിൽ യോഗത്തിനു അധികാരമുണ്ടു്.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: യോഗം എന്നു പറഞ്ഞാൽ അതിൽ പിന്നീടു വന്ന പ്രവർത്തകന്മാരായാലും അധികാരമുണ്ടോ?

മിസ്റ്റർ സി. എ. കുഞ്ഞുണ്ണിരാജാ: പിന്നീടു വന്നവർക്കു അധികാരമില്ല.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: അതുകൊണ്ടു യോഗത്തിനു അധികാരമില്ലെന്നാണ് എനിക്കു തോന്നുന്നതു്. അതിനാണു് ഈ ബിൽ കൊണ്ടുവന്നിട്ടുള്ളതെങ്കിൽ ഇതു ശരിക്കു പാസ്സാക്കേണ്ടതാണു്.

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: ഇങ്ങിനെ വല്ല കേസുമുണ്ടോ?

മിസ്റ്റർ കെ. അയ്യപ്പൻ: ഒരു കേസുണ്ടെന്നു പറയുന്നു.

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: അതു തീർപ്പായതോ?

മിസ്റ്റർ കെ. അയ്യപ്പൻ: ഈ നിയമത്തിൽ സംശയമുണ്ടെങ്കിൽ അതു തീർക്കണം.

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: നിയമത്തിൽ സംശയമുണ്ടു്, അതുകൊണ്ടു ശരിയായി വിധി പറയാൻ പ്രയാസമുണ്ടു് എന്നു കോടതി പറഞ്ഞാൽ ആ സംശയം തീർക്കണം.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: സംശയമുണ്ടെന്നു കോടതി പറയണമോ?

*Speech not corrected by the hon'ble member.

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മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: അതെ, കോടതി പറയുകയാണെങ്കിൽ ഗവൺമെൻറ് അതു ആലോചിക്കും.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: യോഗത്തിനു കിട്ടേണ്ട പണം കിട്ടാൻ കുറി റജിസ്ട്രേഷനിൽ വകുപ്പുണ്ടോ എന്നാണ് ഗവൺമെൻറ് അഡ്വക്കേറ്റിൽ നിന്നും അറിയാനുള്ളതു്.

Mr. C. A. Kunjunni Raja (*Advocate-General*): That is not part of the Kuries Act. It is part of the law of agency. Agents may misappropriate on several occasions and we are not dealing with the law of misappropriation in general by agents.

* മിസ്റ്റർ കെ. അയ്യപ്പൻ: വേറെ ഒരു നിയമം ഇവിടെ വരുന്നില്ല. കുറിയിൽ നിന്നു കൊടുത്ത പണം കുറി ഇല്ലീഗലായതുകൊണ്ടു് തിരിച്ചു കിട്ടാൻ വഴിയുണ്ടോ എന്നാണു് എൻറെ സംശയം. അങ്ങിനെ ഒരു വ്യവസ്ഥ കുറി റജിസ്ട്രേഷനിൽ കാണാത്തതുകൊണ്ടു് ഈ ബിൽ ആവശ്യമാണെന്നു തോന്നുന്നു. ഈ നിയമം കൂടാതെതന്നെ അവകാശരക്ഷയുണ്ടെന്നു ഗവൺമെണ്ടു പറയുന്നു. അതില്ലെന്നു ബഹുമാനപ്പെട്ട അഡ്വക്കേറ്റ് പറയുന്നു. ഏതായാലും സംശയമില്ലാത്ത മാതിരി കുറി വെച്ചു കഴിഞ്ഞു. ഭാരവാഹികൾ അപഹരിച്ചു പണം ഇടാക്കുവാൻ യോഗത്തിനു ഇപ്പോൾതന്നെ നിയമപ്രകാരം സാധിക്കുമെന്നുണ്ടെങ്കിൽ ഇതുകൊണ്ടു് ആവശ്യമില്ല. അങ്ങിനെ സാധിക്കുമോ എന്നുള്ള കാര്യം നിയമവിദഗ്ദ്ധന്മാർ തീർച്ചയാക്കണം. സാധിക്കയില്ലെങ്കിൽ ഈ ബിൽ പാസ്സാക്കണം.

* മിസ്റ്റർ സി. ആർ. ഇയ്യുണ്ണി: ഒരു സംഗതി ആലോചിക്കാനുണ്ടു്. നാലുപേർ കൂടി ഒരു കുറി തുടങ്ങി. ആ കുറി നിയമവിരുദ്ധമായ കുറിയാണു്. അതിൽ പല ആളുകളും ചേർന്നു. കിട്ടിയിട്ടുള്ളവരോടു് സംഖ്യ മടക്കിവാങ്ങിക്കുവാൻ കുറി റജിസ്ട്രേഷൻ പ്രകാരം സാധിക്കും. ഈ കുറിയുടെ ആളായ വേറെ ഒരു ഉദ്യോഗത്തിനു് അതായതു് ഒരു പള്ളിക്കു് എന്നു വെക്കുക, കൊടുക്കാമെന്നു പറഞ്ഞാണു് കുറി തുടങ്ങിയതു്. മിസ്റ്റർ ശിവരാമമേനോൻറെ ഈ ബില്ലു കൊണ്ടു് കുറിയുടെ ഭാരവാഹികൾക്കു പണം കിട്ടുവാൻ തരമില്ല, ആദായം പള്ളിക്കു കിട്ടുമോ?

മിസ്റ്റർ എം. ശിവരാമമേനോൻ: അതു പള്ളിക്കു കൊടുക്കണമെന്നാണു പറയുന്നതു്.

***Mr. P. Govinda Menon** (*Mulakunnathukavu*): I thought that the provisions of the Bill moved by the hon'ble member for Ernakulam would afford no controversy whatsoever. From the doubt raised by the hon'ble member for Trichur I feel that the issues involved in this Bill have not been properly understood. The Kuri Act was passed in 1107 in order to define and declare the law regarding kuries in our State. Before the passing of the Kuri Act there were certain kinds of kuries which the Kuri Act did not think it proper to call legal kuries, that is, kuries partaking of the characteristics of lotteries. Such kuries were not, so to say, illegal. There is no immorality attached to it but only technically they are called illegal. Under the Kuries Act those kuries which were started before the Act

* Speech not corrected by the hon'ble member.

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came into force and partaking of the nature of lotteries were declared illegal. The Kuries Act had to deal with three types: Kuries which have terminated before the Act came into force or past kuries, pending kuries, i. e. kuries which were started before the Act came into force but were still pending and future kuries. Now after the declaration that these kuries are illegal section 50 of the Act thought it proper to validate all the transactions with regard to these kuries although technically under definitions such kuries have been termed illegal; with respect to these kuries it was the intention of the legislature and the framers of the Act to validate every transaction connected with these kuries. That would be evident from section 50 which says "Notwithstanding anything contained in the Indian Contract Act as made applicable to Cochin by His Highness the Maharaja's Proclamation dated 14th August 1908 a subscriber to any transaction mentioned in section 4 and started after the coming into force of this Act shall be entitled to sue for and recover the amounts actually subscribed by him with interest thereon at 6 per cent per annum." With respect to future kuries, the amounts actually subscribed can be taken back from the starters. With respect to future kuries the legislature thought it fit that the subscribers should be protected not by enabling them to enforce the provisions of the contract but by enabling them to recover the actual amount they subscribe. That is the only protection. So far as the amending Act itself is concerned, I do not think that the measure wants to affect future kuries. Once the legislature has thought it fit to declare such kuries illegal, no other relief should be granted either to starters or to beneficiaries of future kuries.

Mr. C. A. Kunjunni Raja (*Advocate-General*): What about clause 1?

Mr. P. Govinda Menon (*Mulakunnathukavu*): The Bill can be properly modified in proper stages. There are pending kuries as well as past kuries. With respect to pending kuries as well as past kuries, it was the intention of the legislature to completely, without any reservation, validate such transactions. That will be clear from sub-sections (2), (3) and (4) of section 50 of the Act. Sub-section (3) reads "Where a suit by a subscriber in any transaction partaking the nature of kuries has been wholly or in part dismissed or withdrawn after the 24th Karkadagam 1097 and before the passing of this Act either in a court of first instance or of appeal on the ground that the claim is illegal as amounting to a lottery, the case may be restored on an application in writing to the court by which the claim was dismissed or in which it was withdrawn,

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provided the application is made within one year from the date of passing this Act and on such restoration the provisions of sub-section (2) of this section shall apply". Sub-section 4 says "No suit instituted by a foreman of a kuri to recover money lent or invested by him out of kuri amounts of any kuri which has been started before the coming into force of this Act shall be liable to be dismissed on the sole ground that the kuri is illegal as amounting to a lottery". Therefore with respect to pending kuries and past kuries the foreman has been protected because he can recover the money from the subscriber. The subscribers have been protected because they can enforce the provisions of the contract. The intention of the legislature was to validate completely kuries partaking of the nature of lotteries started before the Act came into force. Because this Act technically declared that certain types of kuries are illegal, the legislature wanted to protect the interests which have become vested on the date on which the Act was passed. According to me it was an omission on the part of the legislature not to have made the other thing also. The legislature enumerated the occasions on which special protection will have to be afforded to persons who have any connection with kuries and in enumerating such parties they enumerated only these two cases, viz., the foreman and the subscribers. What is sought by the Bill is to complete the intention of the legislature behind the Kuries Act, to completely validate the kuries which have been made illegal by the Kuries Act but which were started before the Act came into force.

Mr. K. Kochukunjan Kaimal (*Vadakkancheri*): Is there any third party to the kuri contract?

Mr. P. Govinda Menon (*Mulakunnathukavu*): Only two. There is a case which my hon'ble friend referred to in 24 Cochin. Members of this House may be pleased to bestow some attention on this. There were three starters and that kuri was made illegal by the Kuri Act. If it were a subscriber who wanted to enforce the provisions of the kuri contract the Court could have enforced it. One of the foremen misappropriated the money and on account of certain defects in the framing of the Act, the other two foremen were helpless. Was it the intention of the legislature when this was passed that the law should be made in that condition? I think, from the consideration of the several provisions of the Act, it will be clear that what was intended was to validate all the kuries which were started before the Act came into force and the reason will be stronger when we consider that there is nothing illegal in kuries partaking of the nature of lotteries. They are only technically

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illegal. The legislature wanted that such kuries should not be started thereafter without the previous sanction of the Government. Such kuries are not declared to be absolutely illegal. If a group of persons want to start new kuries which have been described as belonging to the group of illegal kuries they can do it with the previous sanction of Government. There is no illegality in the real sense of the term. The previous sanction of the Government alone is necessary. With regard to the kuries of this nature the legislature thought that the starters and the subscribers and the whole kuri itself should be validated if it were started before the Act came into force. Mr. Sivarama Menon only wants that the intention of the legislature should be completely carried out. If that should be so, the taint which is attached to such illegal kuries should be declared to be non-existent. Otherwise there would be great hardships. Therefore I have great pleasure to support the amendment proposed.

Mr. A. V. Moothedan (*Chalakkudi*): It is a court of law that is to interpret the intentions of the legislature.

Mr. P. Govinda Menon (*Mulakunnathukavu*): In 24 Cochin the court interpreted it in a certain way. But the legislature wanted the intention to be interpreted in a particular way. It is well-known that when pieces of legislation come before a court of law, unless the intention is expressed explicitly in the section, a court of law will interpret it in their own way. In order to remove these defects this has been brought.

Mr. M. K. Devassy (*Adoor*): I think only two classes of Kuries are contemplated. Kuries started on behalf of institutions the trustees of which misappropriate the money and another class where a set of people join together. They form the foremen, conduct the kuri taking the liability of conducting the kuri upon themselves with a recital that any benefits that it will give will be given to the institutions. Why should such kuries also be included in this?

Mr. M. Sivarama Menon (*Ernakulam*): The money should go to the person in whose name the kuri was started and for whose benefit it was started.

Mr. M. K. Devassy (*Adur*): So the institution which is benefitted has no responsibility.

Mr. M. Sivarama Menon (*Ernakulam*): "It is often said that if the contract concerning which the question is raised is so connected with the illegal transaction that the party suing there-on cannot make out a *prima facie* case without disclosing the illegality, the contract is itself unenforceable, but that otherwise is not invalid on account of such connection. This rule is

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undoubtedly correct as far as it refers to the nature of the facts upon which the plaintiff bases his recovery. If the illegal transaction is in no way necessary to establish the plaintiff's right to recover, it cannot be invoked to defeat such recovery."

"If an agent receive money on his principal's behalf under an illegal or void contract, the agent must account to the principal for the money so received, and cannot set up the illegality of the contract as a justification for with-holding payment, which illegality the other contracting party had waived by paying the money. Upon this principle it has been held that an agent receiving cesses from tenants which are illegal under the Bengal Tenancy Act or moneys due to the principal under a wagering contract, is bound under the provisions of this section to pay the same to the principal. But this rule does not apply where the contract or agency is itself illegal."

മിസ്റ്റർ എം. ശിവരാമമേനോൻ: സർ, ഈ ബില്ലിനെ സംബന്ധിച്ച് ഇവിടെ കഴിഞ്ഞതായ വാദപ്രതിവാദത്തിൽ ഞാൻ ഇതിന്റെ ആവശ്യകതയെപ്പറ്റി പറഞ്ഞിട്ടുള്ള സംഗതികളെയാതൊരു സ്മരിപ്പിക്കലും ശവമ്മെണ്ണമേനോൻ പറഞ്ഞിട്ടില്ല. ശവമ്മെണ്ണ പറഞ്ഞതു ഇതുമാതിരി ഒരു ബില്ലിന്റെ ആവശ്യമില്ല; എന്തെന്നവെച്ചാൽ ഒരു യോഗത്തിനു വേണ്ടിയിട്ടോ മറ്റു സമാജങ്ങൾക്കു വേണ്ടിയിട്ടോ കുറി തുടങ്ങിയാൽ അതു നടത്തുന്നതു യോഗത്തിന്റെ എജണ്ടമാരാണെന്നു കാണാം. അങ്ങിനെ (൮൯) മദ്രാസിൽ ഒരു വിധിയുണ്ടു". ഇങ്ങിനെയുള്ള സമാജങ്ങൾക്കു" പണം കിട്ടുന്നതു വകുപ്പയില്ല, അതുകൊണ്ടു ഈ നിയമത്തിന്റെ ആവശ്യം ഇല്ലെന്നാണു്. എന്നാൽ അതിനെ സംബന്ധിച്ചു (൮൯) കൊച്ചിയിൽ ഉള്ള വിധികൊണ്ടു തന്നെ ഈ കാര്യത്തിൽ ചില കുഴപ്പങ്ങൾ ഉള്ളതായി കാണാം. അതിനാണു് ഞാൻ അതിലെ ചില ഭാഗങ്ങൾ വായിച്ചതു്. ഇപ്പോൾ ഒരു ത്രുപ കുറി നടത്തിയെന്നു മാത്രമേ പറഞ്ഞുള്ളൂ. ഈ കുറി വെച്ചു നടത്തുവാൻ തുടങ്ങിയപ്പോൾ അതിന്റെ പ്രഥമാവശ്യം പറഞ്ഞിരിക്കുന്നതു് ഒരു സ്ഥാപനത്തിനായി കൊടുക്കണമെന്നാണു്. എന്നാൽ (൮൯) കൊച്ചിയിലെ ഒരു ഒബ്സർവേഷൻ Three persons started a Kuri which was in the nature of a lottery and therefore it was considered illegal. അതായതു് ഈ ന്യായവിരുദ്ധമായിട്ടുള്ള ഒരു ത്രുപ കുറി തുടങ്ങിയതു തന്നെ ശരിയല്ല എന്നു മാത്രമേ ഈ വിധികൊണ്ടു കാണുന്നുള്ളൂ. ഈ സംഗതിയെ അടിസ്ഥാനപ്പെടുത്തിയാണെങ്കിൽ വിധി കാണുന്നില്ല.

ഈ (൮൯) കൊച്ചിയിലുള്ള ഒബ്സർവേഷനിൽനിന്നതന്നെ വേറെ പല വിധികളും ഉണ്ടായി. ആ വിധികളിൽ പറഞ്ഞിട്ടില്ല കോറ്റുള്ളേഷൻ മാറേണ്ടതായിട്ടുണ്ടെന്നു"; എന്തെന്നവെച്ചാൽ നിയമത്തിനു ന്യൂനതകളുണ്ടെങ്കിൽ കോടതി പറയും; ഇപ്പോൾ അങ്ങിനെ കോടതി പറഞ്ഞിട്ടില്ലെന്നാണു് ശവമ്മെണ്ണ സിക്കുറി അവർകളും പറഞ്ഞതു്. ശവമ്മെണ്ണയിൽനിന്നതന്നെ ഒരു ബിൽ അവതരിപ്പിച്ചിരിക്കുന്നു. ഇപ്പോൾ സെലക്ട് കമ്മിറ്റിക്കു" അയച്ചിട്ടുണ്ടു്. ആ ബില്ലിൽ (൮൯) കൊച്ചിയിൽ ഉള്ള സംശയത്തിനു ഒരു വ്യാഖ്യാനമാത്രമേ എടുത്തുപറഞ്ഞിട്ടുള്ളൂ. "Except as provided for by section 50, no court shall grant any relief to any person in respect of any transaction so connected with a transaction of the kind mentioned

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in section 4 (1), that the person seeking relief has to rely on or requires the aid of such illegal transaction to establish his right''. ഞാൻ പറയുന്നതു് (൨൪) കൊച്ചിയിലുള്ള വാചകംതന്നെയാണു് ഗവമ്മെണ്ടിന്റെ ബില്ലിലും കൊണ്ടുവന്നിട്ടുള്ളതു് എന്നാണു്.

നിയമവിരുദ്ധമായിട്ടുള്ള കൂറിയിൽ ആക്കെങ്കിലും നിവൃത്തി കിട്ടണമെങ്കിൽ ഇംഗ്ലീഷുകാരുടെ ഉള്ളതെല്ലാം കൊട്ടത്തുകഴിഞ്ഞു വേറെ വല്ലതുമുണ്ടെങ്കിൽ സാധാരണ നിയമത്തെ അനുസരിച്ചു നില്ക്കണം. സാധാരണ നിയമത്തെ സംബന്ധിച്ചാണു് (൨൪) കൊച്ചിൻ വിധിയെന്നുണ്ടെങ്കിൽ അതിൽ കൊണ്ടുവരുവാൻ കാരണമെന്താണു്? അപ്പോൾ ആ വാചകത്തിൽനിന്നും അനുമാനിക്കേണ്ടതു എന്താണെന്നുവെച്ചാൽ ഒരു നിയമവിരുദ്ധമായ കൂറിയെ സംബന്ധിച്ചു എന്തെങ്കിലും വിധി കോടതിയിൽനിന്നു കിട്ടിയാൽ ഗവമ്മെണ്ടു അതിനെപ്പറ്റി ആലോചിക്കാമെന്നാണു്. ആ സമാധാനത്തിന്നു് കോടതിയിൽനിന്നു ഒരു വിധി നേടുന്നതിനു എന്താണു് (൨൪) കൊച്ചിയിലെ മെമ്പ്സർവേഷനിൽ പറയുന്നതു്. ഇതുകൊണ്ടു വളരെ കുഴപ്പങ്ങൾ ഗവമ്മെണ്ടുതന്നെ കൊണ്ടുവന്നപ്പോൾ ഉണ്ടായി. (൨൪) മാസത്തിൽ ഒരു വിധി കുതിരപ്പന്തയത്തെപ്പറ്റി പറയുകയുണ്ടായിട്ടുണ്ടു്. അതിലെ ഒരുഭാഗം ഞാൻ വായിച്ചതു് സൂക്ഷ്മമായിട്ടു മനസ്സിലായില്ല എന്നു ഇവിടെ പറഞ്ഞു. എന്നാൽ അതിനെ വ്യത്യാസപ്പെടുത്തുന്ന ഒരു കോണ്ഡംകൂടി ഉണ്ടു്. അതായതു് ഒരു ലോട്ടറി നടത്തുവാനായിട്ടു് ഒരു യോഗം കൂടുകയും ഒരു ലോട്ടറി കൂറി നടത്തുവാൻ നിശ്ചയിക്കുയും ചെയ്യുന്നതുതന്നെ ഇല്ലീഗൽ ഏജൻസാണു്. അതായതു് നിയമവിരുദ്ധമായ സംഗതികൾ ചെയ്യുന്നതിനു ജനങ്ങൾ പുറപ്പെടുന്നതു ന്യായവിരുദ്ധമാണെന്നാണു്. അതുകൊണ്ടു് ഈ ന്യായവിരുദ്ധമായ കാര്യത്തെപ്പറ്റി ഒന്നും പറയാനില്ല എന്നാണു് ഗവമ്മെണ്ടു പറയുന്നതു്.

എന്നാൽ ഈ നിയമനിർമ്മാണസഭയുടെ ചുമതല എന്താണു്? നിയമത്തിലുള്ള കുഴപ്പങ്ങൾ കണ്ടാൽ മാത്രമേ അതിനെപ്പറ്റി ഇവിടെ ആലോചിപ്പാൻ പാടുള്ളൂ എന്നുണ്ടോ? നിയമസഭയുടെ ഉദ്ദേശം അതല്ല. നിയമത്തിൽ എന്തെങ്കിലും സംശയമുണ്ടെങ്കിൽ അതു എന്താണു്, അതു എങ്ങിനെയാണു തീർക്കേണ്ടതു് എന്നുള്ളതിനെപ്പറ്റി ആലോചിച്ചു തീർച്ചപ്പെടുത്തുകയാണു് നിയമനിർമ്മാണസഭയുടെ ചുമതല. അതിനു ഗവമ്മെണ്ടു പറയുന്നതു് കൊച്ചിരാജ്യത്തെ ജഡ്ജിമാർ ഇതിനെപ്പറ്റി സംശയം ഒന്നും പറഞ്ഞിട്ടില്ല. അതുകൊണ്ടു് ഇവിടെ പറയുന്ന സംശയത്തിനു അടിസ്ഥാനമില്ലെന്നാണു്. ഞാൻ പറയുന്നതു് ഗവമ്മെണ്ടു പറയുന്ന ന്യായങ്ങൾ ഈ ഉദ്ദേശത്തെ നിറവേറ്റാൻ സാധിക്കാത്തതും അനാവശ്യവുമാണെന്നാണു്. ഒരു കേസു് ഇവിടെയുണ്ടു്. അതിൽ അമ്പതിനായിരത്തോളം ഉറുപ്പിക വമ്പന്മാരായിട്ടുള്ള ആളുകൾ കൊടുക്കേണ്ടതായിട്ടുണ്ടു്. യാതൊരു ന്യായവും ഇല്ലാതെ അവർ പണം കരസ്ഥമാക്കിവെച്ചിരിക്കുന്നു എന്നു നിങ്ങളോടു യാതൊരു ലജ്ജയും കൂടാതെ ഞാൻ വെളിപ്പെടുത്തിക്കൊള്ളുന്നു.

ഞാൻ അവതരിപ്പിച്ചിട്ടുള്ള ഈ ബില്ലു് സഭയിൽ പ്രസിദ്ധപ്പെടുത്തിയതിനു ശേഷം ഇങ്ങിനെ എത്ര കേസുകൾ ഉണ്ടായിരിക്കുമെന്നു എഴുതി അയക്കാൻ എന്നോടും ഗവമ്മെണ്ടു ആവശ്യപ്പെട്ടു. അപ്പോൾ അതിന്റെ അർത്ഥം ഈ നിയമം ഗവമ്മെണ്ടു സമ്മതിക്കണമെങ്കിൽ ഇതിന്റെ കണക്കു ഗവമ്മെണ്ടിനു വെളിപ്പെടുത്തിക്കൊടുക്കണമെന്നാണു്. ഗവമ്മെണ്ടിനു എത്ര ആളുകൾ ഉണ്ടായിരിക്കുമെന്നറിയുന്നതിനു ആ വിവരത്തിനു സഭയിൽ പ്രസിദ്ധം ചെയ്താൽ വേണ്ട തെളിവു കിട്ടുമെന്നാണു് ഞാൻ വിചാരിക്കുന്നതു്.

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ഈ നിയമം പാസ്സാക്കുന്നതുകൊണ്ടു് ആക്ഷേപം സങ്കടം. പണം കൈവശം വെച്ചിട്ടുള്ള ആരെങ്കിലും ഗവൺമെണ്ടിന്റെ അടുത്തു് ആവലാതി ബോധിപ്പിച്ചിട്ടുണ്ടോ? പിന്നെ എന്തു കാരണംകൊണ്ടാണു് ഗവൺമെണ്ടു് ഇതിനെ എതുക്കുന്നതെന്നു ഞാൻ ഗവൺമെണ്ടു് സിക്രട്ടറി അവർകളോടു ചോദിക്കുന്നു. ഈ നിയമം ഗസറ്റിൽ പ്രസിദ്ധം ചെയ്തതിനു ശേഷം ഗവൺമെണ്ടിതിനെ എതുക്കണമെന്നു ഒരു ഒറ്റ ആക്ഷേപമെങ്കിലും രേഖാമൂലമോ മറ്റുവിധത്തിലോ ഗവൺമെണ്ടിന്റെ ദൃഷ്ടിയിൽ ആരെങ്കിലും കൊണ്ടുവന്നിട്ടുണ്ടോ? കൊണ്ടുവന്നിട്ടുണ്ടെങ്കിൽ അതിനെപ്പറ്റി ആലോചിക്കാമായിരുന്നു. അങ്ങിനെ ആക്ഷേപങ്ങളൊന്നും ഇല്ലാത്ത സ്ഥിതിക്കു ഗവൺമെണ്ടു് ഇതിനെ എതുക്കുമെന്നു ഞാൻ വിചാരിച്ചിരുന്നില്ല. അനുഭോഗപക്ഷത്തുനിന്നു ഇതിനു എതുപ്പുണ്ടാകുമെന്നു ഞാൻ വിചാരിച്ചിരുന്നു. കാരണം ഒരേകേസ്സു് രണ്ടു വക്കീലന്മാർ ഒന്നിച്ചു വാദിച്ചതായിട്ടു കേട്ടിട്ടില്ല. ഈ ബില്ലിൽ എന്തെങ്കിലും വ്യത്യാസം വരുത്തണമെങ്കിൽ അതു സെലക്ട്കമ്മിറ്റിയിൽ വെച്ചു ചെയ്യാവുന്നതാണു്. ഇതു ജനങ്ങളുടെ രക്ഷക്കു അത്യാവശ്യമായ ഒരു ബില്ലാണു്. ഈ ബിൽ പൊതുജനങ്ങൾക്കു അത്യാവശ്യമാണെന്നുള്ളതു എല്ലാ അനുഭോഗസ്ഥ സാമാജികന്മാരും വെളിപ്പെടുത്തിക്കഴിഞ്ഞു. അങ്ങിനെയുള്ള ഈ ബില്ലിനെ ഗവൺമെണ്ടു് എതുത്തുകാണുന്നതിൽ ഇതിന്റെ പിന്നിൽ എന്തോ ഒളിഞ്ഞുകിടക്കുന്നുണ്ടെന്നു വേണം വിചാരിക്കുവാൻ. (ർ ർ) മദ്രാസ്സിൽ ഇതു സംബന്ധമായി ഒരു വിധിയുണ്ടായിട്ടുണ്ടു് എന്നു ഗവൺമെണ്ടു പറയുന്നു. മറ്റുള്ള കോടതികളിൽ വല്ല വിധിയുമുണ്ടായിട്ടുണ്ടെങ്കിൽ അതു നമ്മുടെ ഹൈക്കോടതിയും അംഗീകരിച്ചുകൊള്ളണമെന്നില്ല. അതുകൊണ്ടു ഈ ബില്ലിൽ അടങ്ങിയിട്ടുള്ള സംഗതിയിൽ എന്തെങ്കിലും തെളിവു ശേഖരിക്കണമെന്നുണ്ടെങ്കിൽ അതിനു ഗസറ്റിൽ ഒരു 'കാസ്റ്റ്യനയർ' പബ്ലിഷ് ചെയ്യുകഴിഞ്ഞാൽ കിട്ടുന്നതാണു്. മിസ്റ്റർ വിശ്വംഭരൻ തന്നെ അദ്ദേഹത്തിന്റെ അറിവിൽപെട്ട ഒരു സംഗതി പറയുകയുണ്ടായി. അതുകൊണ്ടു ഈ പ്രതനത്തിൽ ഈ ബിൽ ഇൻറർഡ്യൂസ് ചെയ്യണമെന്നാണു് എന്റെ അപേക്ഷ.

മിസ്റ്റർ ടി. എ. രാമചന്ദ്രയ്യർ: ഈ വക കുറികളിൽ ഗവൺമെൻറിനു വല്ല ഓഹരികളുമുണ്ടോ?

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: ഇല്ല.

മിസ്റ്റർ ടി. എ. രാമചന്ദ്രയ്യർ: പിന്നെ ഇതിനെ എതുക്കുവാനെന്താണു കാരണം?

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: അതാണു ഞാൻ പറയുവാൻ പോകുന്നതു്. In the course of my friend's reply it was stated that the attitude so far as this Bill is concerned taken up by the Government seems to be rather mysterious, that there must be very strong influences working behind which prompted the Government to take up this attitude. The House may rest assured that Government have absolutely no interest in this matter except the interest of the general public. Mr. Govinda Menon in the course of his speech began with the assumption that the previous Act intended such and such things and he categorically mentioned two or three things. So far sa future kuries are concerned

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such and such things and so far as past and pending kuries, all transactions have been validated and that that was the intention of the legislature, I am not prepared to accept it. What that Act really intended is only this. There are certain transactions which are illegal. Many poor persons had gone and subscribed their hard earned cash in the hope that they will win the prizes. Now when these kuries have been declared illegal Government really wanted to save such people in order that they may be enabled to get back their subscriptions. For that provision was made. Those subscribers who have paid their cash are enabled to take back their subscriptions which they have paid and the general law of the Contract Act will not come into play so far as they are concerned.

That is one aspect of the matter. Now, so far as the kuri is concerned, there are only two parties, the foreman and the subscriber, whether the former is composed of half-a-dozen persons or only one person, or whether there is only one trustee so far as the institution is concerned or whether there are half-a-dozen trustees. Each subscriber enters into a contract. If are hundred subscribers, there are 100 contracts.

Mr. K. Ayyappan (*Ezhuvas-Kanayannur*): Will there not be two interests in a single party?

Mr. K. P. Kannan Nayar (*Secretary to Government*): There are only two parties primarily before the court of law, that is, the subscriber and the foreman. These are the two parties who are directly connected in a kuri transaction. Now, so far as the subscriber is concerned, the Government said that this lottery law will not stand in your way, you can take back your money. Now so far as the foreman is concerned, the law compels him to pay back the money. But so far as the money which he has to collect is concerned, I think Mr. Mathai has been saying that in all these kuries, there will be huge profits. In fact, that actual profit is the interest. After a certain stage, there is only the interest, which the foreman gets.

Mr. K. Ayyappan (*Ezhuvas-Kanayannur*): All the money received will be swallowed? No distribution among the subscribers?

Mr. K. P. Kannan Nayar (*Secretary to Government*): So far as these subscribers are concerned, the law enables the foreman to get back the subscription money. The foreman might have invested his money in so many places because he has to get interest. So far as the first ticket is concerned, suppose there are 500 people, there would be 500 rupees. The first

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prize winner has to be paid only Rs. 100 so that there is Rs. 400 left. That Rs. 400 should be invested, foreman lends it either to the subscribers themselves or to outsiders. Now, for the foreman to pay back the money to the subscribers, he should be enabled to take back the money invested with other people. The law has provided for it. These are the two things which the law has provided for. There may be so many disputes between the out-going kaikars and incoming kaikars. Their relationship will have to be guided by the ordinary law. The Kuri Act does not provide for it.

Mr. Govinda Menon thinks that we must suppose that it has been provided there. Mr. Sivarama Menon thinks that there must be a provision for that also, to decide their disputes. Government think it unnecessary. The ordinary law saves him. If the ordinary law does not save him, Government has nothing to do with that. Government have to help the subscribers as well as the foreman.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: ഓർഡിനറിരൂപത്തിൽ ഇതു സമ്മതിക്കാമോ?

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: ഇവർ തമ്മിൽ ഉള്ള തക്കങ്ങൾ തീർക്കുന്നതിന്നു ഇതു ആവശ്യമില്ല. ഫോർമാൻ എന്നു പറഞ്ഞാൽ രണ്ടു വിധത്തിൽ പറയാം. സാധാരണയായിട്ടു ഒരു പള്ളിയുടെ കാര്യം നടത്തുന്നവരാണെങ്കിൽ കൈക്കാരന്മാർ എന്നു പറയാം. എന്നാൽ കുറി നടത്തിപ്പിന്നുള്ള പ്രവർത്തകന്മാരെ ഏജൻറുമാർ എന്നു പറയുന്നു. പള്ളിയുടെ പണത്തിന്നു ഈ നിയമം ഒന്നും ആവശ്യമില്ല.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: ഈ കുറിയെ സംബന്ധിച്ചിടത്തോളം മറവിലോ ആപ്പളിക്കബിലോ അല്ലാതായിതീർന്നാൽ ഈ ബിൽ വേണ്ടേ?

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: വേണ്ട.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: ജനങ്ങളുടെ പണം പിരിച്ചെടുത്താൽ അതു കൊടുക്കണ്ടേ?

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: ജനങ്ങളുടെ പണമെല്ലാം മടക്കിക്കൊടുക്കുകയല്ലേ ചെയ്യുന്നതു?

മിസ്റ്റർ കെ. അയ്യപ്പൻ: കൈക്കാരന്മാർ പണംപിരിച്ചു എടുത്തു യോഗത്തിന്നോ പള്ളിക്കോ ആ പണം ഇടാക്കുവാൻ അധികാരം വേണ്ടേ?

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: വേണം. കൈക്കാരന്മാർ പള്ളിയുടെ പേരിലുള്ള പണം എടുത്തു തക്കിച്ചുകൊണ്ടു നില്ക്കയാണെങ്കിൽ അവരുടെ പേരിൽ ഉണ്ടാകുന്ന വസ്തുക്കൾ വിറ്റു ഇടാക്കുവാൻ അവക്കധികാരമുണ്ടു്. പള്ളിയെന്നു പറയുന്നതും യോഗം എന്നു പറയുന്നതും ജീവിച്ചിരിക്കുന്ന ഒരു വസ്തുവല്ല. വല്ലപ്പോഴും ഏതെങ്കിലും ഒരു ദേവസ്വത്തിൻറെ പേരിൽ പണം കൊടുക്കുന്നതിന്നു വിധിയുണ്ടായി എന്നു വെക്കുക. എന്നാൽ അതിൻറെ ട്രസ്റ്റി തൻറെ കൈവശം ഇരിക്കുന്ന വിധി ഹേതുവായിട്ടുള്ള പണം കൊടുക്കാതെ ദേവസ്വത്തിൻറെ പണം എടുത്തു കൊടുത്തു കടം തീർത്തു എന്നു വെക്കുക. അങ്ങിനെ വന്നാൽ ഒടുവിൽ ആ ട്രസ്റ്റിയെ പിരിക്കേണ്ടതായിവരും. അങ്ങിനെ വരുന്നുണ്ടെങ്കിൽ ആ കാര്യത്തിൽ യോഗവും ട്രസ്റ്റിയും ദേവസ്വവും തമ്മി

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മല്ലാതെ തള്ളിനിന്നവരാരുമില്ല. അതിനു പ്രത്യേകം ഒരു നിയമം ആവശ്യമില്ല.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: ഞാൻ ഗവൺമെൻറിനോടു ചോദിക്കുന്നതു് ഈ Law of Agency ഇതിനു അപ്ലൈ ചെയ്യുവാൻ സാധിക്കുമോ എന്നു തീർത്തു പറയാമോ എന്നാണു്.

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: അപ്ലൈ ചെയ്യാമെങ്കിൽ ചെയ്യാം. അല്ലെങ്കിൽ ചെയ്യുകയില്ല.

മിസ്റ്റർ പി. ഗോവിന്ദമേനോൻ: അതിനു കുറെ നിയമം തടസ്ഥമാകുമെന്നുള്ളതാണു് ഈ ബില്ലിൻറെ ഉദ്ദേശം.

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: കുറെ നിയമം തടസ്ഥമാകയില്ലെന്നാണു ഞാൻ പറയുന്നതു്. ഈ കാര്യത്തിൽ ഗവൺമെൻറിനു ചില വിദഗ്ധന്മാരുടെ അഭിപ്രായം അറിയാതെ നിവൃത്തിയില്ല. അതിനു ഇപ്പോൾ ആരെയെങ്കിലും ആക്ഷേപങ്ങൾ സ്വീകരിച്ചിട്ടുണ്ടോ, വല്ലവരും ആക്ഷേപിച്ചിട്ടുണ്ടോ ഇവരെ ചോദ്യങ്ങൾക്കൊന്നും പ്രസക്തിയില്ല. ഗവൺമെൻറിൽ നിന്നു ചില ഉദ്യോഗസ്ഥന്മാരെ ഇവരെ കാര്യത്തിനു നിയമിച്ചിട്ടുണ്ടു്. അവരുടെ അഭിപ്രായം ചോദിച്ചു ആ അഭിപ്രായം കൊണ്ടു പ്രവർത്തിക്കുന്നതല്ലാതെ ഇതിൽ വല്ലവരുടെയും പിന്നിൽനിന്നുള്ള പ്രേരണകളെ കുറിച്ചുകളും ഉണ്ടെന്നു പറയുന്നതിനൊന്നും യാതൊരു പ്രസക്തിയുമില്ല, അർത്ഥവുമില്ല.

മിസ്റ്റർ എം. തിവാരാമമേനോൻ: വിദഗ്ധാഭിപ്രായം ആവശ്യമില്ലെന്നു ഞാൻ പറഞ്ഞിട്ടില്ല.

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: പിന്നെ ഇവിടെ ആ മെമ്പറോടു ഇതിനെറ തെളിവു ചോദിച്ചു എന്നു പറയുകയുണ്ടായി. ആ മെമ്പറുടെ അറിവിൽ ഈ വക കാര്യം വല്ലതും പെട്ടിട്ടുണ്ടോ എന്നു ചോദിക്കുകയുണ്ടായി. അതിനു യാതൊരു സമാധാനവും കിട്ടിയില്ല. പ്രത്യേകിച്ചു ഇങ്ങിനെ ഒരു ബില്ലു കൊണ്ടുവരുമ്പോൾ ആ മെമ്പർക്കു ചില ആവലാതികളൊക്കെ അതിനെപ്പറ്റി കിട്ടിയിട്ടുണ്ടായിരിക്കണം. അങ്ങിനെ വല്ലതും അറിവുണ്ടോ എന്നും ഉണ്ടെങ്കിൽ അതു ദയവായിട്ടു് അറിയിക്കണം എന്നു അദ്ദേഹത്തോടു ആവശ്യപ്പെട്ടു. അതിനു മറുപടിയും കിട്ടിയില്ല.

മിസ്റ്റർ എം. തിവാരാമമേനോൻ: അതുകൊണ്ടു ബിൽ ഒപ്പോസ് ചെയ്യരുതെന്നോ?

മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ: അതുകൊണ്ടല്ല.

The motion was put and carried.

Mr. K. P. Kannan Nayar (*Secretary to Government*): Poll Sir.

Ayes.

1. Mrs. Thankamma N. Menon
2. Mr. V. J. Mathai
3. „ C. V. Iyyu
4. „ V. N. Damodaran Nambiar
5. „ V. K. Bhaskara Menon
6. Mr. K. Ayyappan
7. „ M. Sivarama Menon
8. „ A. Eachara Menon
9. „ K. S. Panicker
10. „ L. M. Pylee
11. „ M. L. Joseph

12. Mr. B. M. Peter
13. „ V. K. Krishnankutty
14. „ Ismail Hajee Essa Sait
15. „ M. K. Devassy
16. „ T. A. Ramachandra Ayyar
17. Mr. P. Govinda Menon
18. „ C. Kunhan Nambudiripad
19. „ P. Achyuta Menon
20. „ N. V. Subrayan Chetty

Noes.

1. Mr. A V. Moothedan
2. „ C. R. Iyyunni
3. „ K. Kochukunhan Kaimal
4. „ C. K. S. Moni
5. „ K. P. Kannan Nayar
6 „ P. Achyuta Menon
7. „ P. J. George
8. „ C. A. Kunjunni Raja
9. Dr. D. Raghavendra Rao
10. Rao Bahadur M. Narayana Menon
11. Mr. K. V. Menon
12. „ S. Venkateswaran
13. Rao Sahib I. N. Menon
14 Rama Varmha Tampuran
15. Mr. M. Raman Menon

Mr. Deputy President: 21 for and 15 against.

Secretary to the Council: The title of the Bill is "The Cochin Kuries Act Amendment Bill."

Mr. M. Sivarama Menon (*Ernakulam*): I beg to move that the President may be pleased to suspend the Standing Order and that the Bill may be referred to a Select Committee to which the Government Bill has been referred to consisting of the Advocate-General as the Chairman.

Mr. Deputy President: The Bill is referred to a Select Committee consisting of:— Messrs. P. Govinda Menon, V. J. Mathai, A. V. Moothedan, K. R. Viswambharan, . R. Iyyunni, M. Sivarama Menon, M. K. Devassy and The Advocate-General.

The Committee will report within three months and the Advocate-General shall be the Chairman of the Committee.

The Cochin Usurious Loans Act Amendment Bill.

Mr. T. V. Subramania Ayyar (*Nemmara*): Mr. President, Sir, I move that the Cochin Usurious Loans Act Amendment Bill be read in Council.

Mr. C. Kunhan Nambudiripad (*Urakam*): I second it.

Mr. T. V. Subramania Ayyar (*Nemmara*): I do not think that a long speech from me is required for the purpose of introducing this Bill. I will just read the Objects and Reasons which I have given along with the Bill and in case, after debate and after seeing the attitude of the Government, I think an elaborate answer is necessary, I shall avail myself of the opportunity to do so. Since the Government is at present concerned only with the acceptance or rejection of the principles embodied

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